

**Subpart—Potato Cyst Nematode**

SOURCE: 72 FR 51984, Sept. 12, 2007, unless otherwise noted.

**§ 301.86 Restrictions on interstate movement of regulated articles.**

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.<sup>1</sup>

**§ 301.86-1 Definitions.**

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture.

*Associated field.* A field that has been found to be at risk for infestation with potato cyst nematode in accordance with § 301.86-3(c)(2).

*Certificate.* A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of potato cyst nematode and may be moved interstate to any destination.

*Compliance agreement.* A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

*Departmental permit.* A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.86-4.

*Field.* A defined production site that is managed separately from surrounding areas for phytosanitary purposes.

*Infestation (infested).* The presence of the potato cyst nematode or the existence of circumstances that makes it reasonable to believe that the potato cyst nematode is present.

*Infested field.* A field that has been found to be infested with potato cyst nematode in accordance with § 301.86-3(c)(1).

*Inspector.* Any employee of APHIS or other person authorized by the Administrator to perform the duties required under this subpart.

*Interstate.* From any State into or through any other State.

*Limited permit.* A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.86-5(b) only to a specified destination and only in accordance with specified conditions.

*Moved (move, movement).* Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

*Nursery stock.* Living plants and plant parts intended to be planted, to remain planted, or to be replanted.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

*Plant Protection and Quarantine.* The Plant Protection and Quarantine program of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

*Potato cyst nematode.* The potato cyst nematode (*Globodera pallida*), in any stage of development.

*Quarantined area.* Any State or portion of a State designated as a quarantined area in accordance with the provisions in § 301.86-3.

*Regulated article.* Any article listed in § 301.86-2 or otherwise designated as a regulated article in accordance with § 301.86-2(i).

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

**§ 301.86-2 Regulated articles.**

The following are regulated articles:

<sup>1</sup>Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 414 of the Plant Protection Act (7 U.S.C. 7714).

- (a) Potato cyst nematodes.<sup>2</sup>
- (b) The following potato cyst nematode host crops:  
Eggplant (*Solanum melongena* L.)  
Pepper (*Capsicum* spp.)  
Potato (*Solanum tuberosum* L.)  
Tomatillo (*Physalis philadelphica*)  
Tomato (*Lycopersicon esculentum* L.)
- (c) Root crops.
- (d) Garden and dry beans (*Phaseolus* spp.) and peas (*Pisum* spp.).
- (e) All nursery stock.
- (f) Soil, compost, humus, muck, peat, and manure, and products on or in which soil is commonly found, including grass sod and plant litter.
- (g) Hay, straw, and fodder.
- (h) Any equipment or conveyance used in an infested or associated field that can carry soil if moved out of the field.
- (i) Any other product, article, or means of conveyance not listed in paragraphs (a) through (h) of this section that an inspector determines presents a risk of spreading the potato cyst nematode, after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

**§ 301.86-3 Quarantined areas.**

(a) *Designation of quarantined areas.* In accordance with the criteria listed in paragraph (c) of this section, the Administrator will designate as a quarantined area each field that has been found to be infested with potato cyst nematode, each field that has been found to be associated with an infested field, and any area that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from infested or associated fields. The Administrator will publish the description of the quarantined area on the Plant Protection and Quarantine Web site, [http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/potato/pcn.shtml](http://www.aphis.usda.gov/plant_health/plant_pest_info/potato/pcn.shtml). The description of the quarantined area will include the date the description was last updated and a de-

scription of the changes that have been made to the quarantined area. The description of the quarantined area may also be obtained by request from any local office of PPQ; local offices are listed in telephone directories. After a change is made to the quarantined area, we will publish a notice in the FEDERAL REGISTER informing the public that the change has occurred and describing the change to the quarantined area.

(b) *Designation of an area less than an entire State as a quarantined area.* Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the potato cyst nematode.

(c) *Criteria for designation of fields as infested fields and associated fields.* (1) *Infested fields.* The Administrator will designate a field as an infested field when a potato cyst nematode is found in the field.

(2) *Associated fields.* The Administrator will designate a field as an associated field when potato cyst nematode host crops, as listed in § 301.86-2(b), have been grown in the field in the last 10 years and

(i) The field shares a border with an infested field; or

(ii) The field came into contact with a regulated article listed in § 301.86-2 from an infested field within the last 10 years; or

(iii) Within the last 10 years, the field shared ownership, tenancy, seed, drainage or runoff, farm machinery, or other elements of shared cultural practices with an infested field that could allow spread of the potato cyst nematode, as determined by the Administrator.

(d) *Removal of fields from quarantine—*(1) *Infested fields.* An infested field will be removed from quarantine when a 3-year biosurvey protocol approved by APHIS has been completed and the field has been found to be free of PCN.

<sup>2</sup>Permit and other requirements for the interstate movement of potato cyst nematodes are contained in part 330 of this chapter.